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Attorneys for Plaintiff HVMN Inc.

8
9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 HVMN INC., a Delaware Corporation,

14 Plaintiff,

15 v.

16
17 HUMAN POWER OF N COMPANY,
18 a Texas Corporation,

19 Defendant.

Case No.: _____

**COMPLAINT FOR
DECLARATORY JUDGMENT
OF NON-INFRINGEMENT**

1 Plaintiff, HVMN Inc. (“HVMN” or “Plaintiff”), by and through its attorneys,
2 for its Complaint against Defendant, Human Power of N Company (“Defendant”),
3 alleges upon information and belief as follows:

4 **THE PARTIES**

5 1. Plaintiff is a Delaware corporation located at 505 Montgomery Street,
6 Suite 1025, San Francisco, CA 94111.

7 2. Upon information and belief, Defendant is a Texas corporation located at
8 1122 S. Capital of Texas Hwy, Suite 300, West Lake Hills, TX 78746-6728.

9 **JURISDICTION AND VENUE**

10 3. This is a civil action for a declaratory judgment of non-infringement.

11 4. Jurisdiction is proper in this Court because this litigation arises under
12 federal law, namely 17 U.S.C. § 1051 et seq. (Lanham Act). The Court has
13 jurisdiction over this action under 28 U.S.C. § 1331 (federal question), 28 U.S.C.
14 § 1338(a) (trademarks), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

15 5. This Court has personal jurisdiction over Defendant because Defendant,
16 *inter alia*, transacts business in the State of California and within this district, engages
17 in a persistent course of conduct in the State of California, and expects, or should
18 reasonably expect, its acts to have legal consequences in the State of California.

19 6. Venue is proper in the Northern District of California pursuant to 28
20 U.S.C. § 1391 because Defendant conducts or has regularly conducted business in this
21 judicial district, including advertising and selling its products in at least eleven (11)
22 retail store locations within this district and advertising and selling its products
23 through the Internet to California residents. As such, Defendant expects, or should
24 reasonably expect, its acts to have legal consequences in this District.

25 7. As detailed below, a substantial case or controversy has arisen between
26 the parties.

FACTUAL BACKGROUND

Plaintiff's Business and Trademark

8. HVMN is a San Francisco based company that develops and manufactures nutrition products that are geared towards optimizing and improving cognitive, physical, and metabolic human performance. Its innovative and patented HVMN Ketone ester drink is the world's first ketone ester drink. *See HVMN Ketone*, HVMN, <www.hvmn.com/ketone> (last accessed Sept. 6, 2018). It is a unique metabolic performance drink that improves athletic training, recovery, and metabolism. *Id.* Plaintiff advertises the HVMN Ketone drink specifically for “any athlete dedicated to achieving ambitious goals.” *Id.* The consumption of the drink elevates an athlete's blood ketone levels for three (3) to six (6) hours to enhance athletic performance. *Id.*

9. HVMN is the exclusive owner of all rights, title, and interest in and to various federal trademark registrations and applications, including U.S. Trademark Registration No. 5,361,363 for the mark HVMN, which is registered in connection with the following goods:

- **Class 05:** Dietary and nutritional supplements; dietary and nutritional supplements containing ketones; liquid protein supplements, namely, ketogenic protein supplement shakes and drinks; nutritional supplements energy bars; nutritional supplements in the form of energy gels, pastes and chews.
- **Class 30:** Cereal based energy bars; candy.
- **Class 32:** Sports performance drinks.

(the “HVMN Mark”). A true and correct copy of Plaintiff's Certificate of Registration and current status printouts from the United States Patent and Trademark Office's Trademark Status and Document Retrieval system are attached hereto as Exhibit A. This registration is valid, subsisting, and conclusive evidence of HVMN's exclusive right to use the HVMN Mark in commerce in connection with the registered goods (the “Goods”) and for those goods within the zone of natural expansion.

10. As evidenced by the U.S. Patent and Trademark Office's ("USPTO") issuance of Registration No. 5,361,363, the HVMN Mark is inherently distinctive.

11. Since at least June 27, 2017, Plaintiff has continuously used the HVMN Mark on or in connection with the Goods in the United States. Through extensive and continuous use, marketing, and advertising of the HVMN Mark, the HVMN Mark has acquired substantial goodwill and trademark distinctiveness in the minds of the relevant trade and public as an indicator of a single source for the Goods.

12. As a result of this longstanding, exclusive, and continuous marketing, promotion, advertisement, and sale of products under the HVMN Mark, the relevant trade and the public have come to immediately associate the HVMN Mark with Plaintiff and to expect goods bearing the HVMN Mark to have a connection or association with Plaintiff.

13. Plaintiff has vigilantly policed and enforced its exclusive rights so as to prevent unauthorized use of the HVMN Mark by competitors.

Defendant's Business and Trademarks

14. Upon information and belief, Defendant's business, in stark contrast to Plaintiff's business, develops and manufactures *Nitric Oxide* functional foods and supplements. *About Us*, HUMANN, <<https://www.humann.com/why-humann/>> (last accessed Sept. 6, 2018). According to Defendant's website "Nitric Oxide (N-O) is a gas composed of one atom of nitrogen bonded to one atom of oxygen. It serves as a critical signaling molecule in the *cardiovascular and circulatory systems*." *What is Nitric Oxide (N-O)?*, HUMANN, <<https://www.humann.com/science-overview/how-nitric-oxide-works/>> (last accessed Sept. 6, 2018) (emphasis added). Defendant's Nitric Oxide products are primarily geared towards consumers who are "the age of 40 and beyond," as that is when the human "body's natural Nitric Oxide levels begin and then continue to fall." *Our Philosophy*, HUMANN, <<https://www.humann.com/why-humann/our-philosophy/>> (last accessed Sept. 6, 2018). Defendant's Nitric Oxide products are for the ultimate purpose of "help[ing] the body to promote optimal N-O

function.” *Id.* The company touts itself as the best qualified Nitric Oxide company, stating: “there is no other company more committed, or qualified, to bring the best N-O functional foods and supplements to every human” *About Us*, HUMANN, <<https://www.humann.com/why-humann/>> (last accessed Sept. 6, 2018).

15. Upon information and belief, Defendant is the exclusive owner of all rights, title, and interest in and to, *inter alia*, the following trademark registrations:

- U.S. Trademark Registration No. 5,355,870 for the mark humanⁿ in connection with the following goods (the “HPNC Design Mark”):
 - Class 5: Pharmaceuticals, health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods and beverages adapted for medical purposes; dietary and nutritional supplements; herbal supplements; vitamin and mineral supplements; dietary supplements for weight-loss or energy boosting in the nature of powders, tablets, capsules, lozenges, and nutritional supplement meal replacement bars for boosting energy, and immunity boosting nutritional supplements.
 - Class 29: Processed meats and processed foods, namely, preserved, dried, and cooked fruits and vegetables; jellies and jams.
 - Class 32: Fruit and vegetable beverages, instant fruit and vegetable flavored drinks, soft drinks, and other preparations in liquid or powder form for making nonalcoholic fruit, vegetable, herbal, and cola beverages.
- U.S. Trademark Registration No. 5,351,133 for the mark HUMANN in connection with the following goods (the “HPNC Word Mark”):
 - Class 5: Pharmaceuticals in the nature of health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods, namely, bars, powders, tablets, gummies, chews, and capsules containing combinations of protein, fruits, vegetables, grains, amino acids, minerals, nutrients and vitamins; beverages, namely, ready to drink and powdered drink mixes containing combinations of protein,

1 fruits, vegetables, grains, amino acids, fortified with mineral,
2 nutrients, and vitamins.

- 3 • Class 29: Meats and Processed Foods in the nature of
4 preserved, dried and cooked fruits and vegetable; jellies and
5 jams.
- 6 • Class 32: Light Beverages in the nature of instant flavored
7 drinks, namely, fruit, grain, and vegetable juices and soft
8 drinks; preparations in liquid or powder form for making non-
9 alcoholic fruit, vegetable, herbal, and cola beverages, namely,
10 fruit, grain, and vegetable juices and combinations thereof.

11 (collectively, the “HPNC Marks”). A true and correct copy of Defendant’s Certificates
12 of Registration and current status printouts from the USPTO’s Trademark Status and
13 Document Retrieval system are attached hereto as Exhibit B.

14 16. Upon information and belief, Defendant made sworn statements to the
15 USPTO that it has been using the HPNC Marks in connection with the Goods since at
16 least as early as June 2016. See Trademark Statements of Use submitted by Defendant
17 to the USPTO in connection with the HPNC Marks attached hereto as Exhibit C.
18 However, on or about August 28, 2018, in a deposition taken pertaining to the
19 Cancellation Action (defined below), Defendant conceded that it has not used the
20 HPNC Word Mark and/or the HPNC Design Mark in commerce in connection with
21 the following **registered** goods: (i) bars; (ii) gummies; (iii) chews; (iv) any form of
22 liquid beverages; (v) meats and processed foods in the nature of preserved, dried and
23 cooked fruits and vegetables; and (vi) jellies or jams. See excerpt from the deposition
24 transcript of Kelly Harrelson, pp. 70-72 attached hereto as Exhibit D. The USPTO
25 records indicate that Defendant has not filed any post-registration amendment to
26 remove these goods from the identifications of goods or to correct the false statements
27 sworn to the USPTO.
28

1 **Defendant's Cancellation Action and Threats**

2 17. The USPTO Examining Attorney assigned to review Plaintiff's HVMN
3 Mark during its application phase permitted the application to register without any
4 likelihood of confusion citation, thus finding the HVMN Mark to be unique and
5 distinctive *from any other mark on the trademark register*. The Examining Attorney
6 never cited Defendant's HPNC Marks as an issue – or any other mark for that matter.

7 18. Yet, on or around December 29, 2017, Defendant filed a Petition to
8 Cancel Plaintiff's U.S. Trademark Registration No. 5,361,363 for the HVMN mark
9 with the USPTO's Trademark Trial and Appeal Board ("TTAB") (the "Cancellation
10 Action"). In this Petition, Defendant challenged Plaintiff's rights to the HVMN Mark,
11 alleging a priority of use and a likelihood of confusion with the HPNC Marks. See a
12 true and correct copy of the Petition for Cancellation (proceeding no. 92067643) filed
13 by Defendant with the TTAB attached hereto as Exhibit E. Defendant alleges in its
14 Petition for Cancellation that: (i) "[Defendant] began using the HUMANN mark in
15 interstate commerce over a year before [Plaintiff's] first use in interstate commerce;"
16 and (ii) the marks are similar in appearance, connotation, commercial appearance, the
17 goods, and channels of trade to cause confusion in the marketplace. Id.

18 19. On or about August 28, 2018, Plaintiff conducted a deposition of Bril
19 Flint, the Chief Technology and Supply Chain Officer at Human Power of N
20 Company, in connection with the Cancellation Action. During the deposition,
21 Defendant outwardly represented to Plaintiff's counsel that it views Plaintiff's use of
22 the HVMN Mark as trademark infringement. See excerpt from deposition transcript of
23 Bril Flint, p. 52 attached hereto as Exhibit F.

24 20. During the deposition, Defendant further threatened the possibility of
25 filing and pursuing a trademark infringement lawsuit against Plaintiff. See id.
26 Specifically, when asked by Plaintiff's counsel "[i]s there [a] reason why you haven't
27 sued HVMN," Mr. Flint responded "[t]hat possibility remains open." Id.

21. On or about September 5, 2018, Defendant's counsel in the Cancellation Action communicated to Plaintiff's counsel that the dispute with Defendant regarding the HVMN Mark will not be resolved unless and until HVMN "abandon[s] its registration and change[s] its name to a mark that is not confusingly similar to my client's trademark for Humann." See email correspondence from Defendant's counsel attached hereto as Exhibit G.

22. Based on the foregoing, there is an actual controversy between the parties. Defendant's Petition for Cancellation, threats, and unreasonable demands are of immediate concern to Plaintiff as its business, brand, reputation, and investments are all at stake because of Defendant's actions.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF

TRADEMARKS

(15 U.S.C. § 1051 et seq.)

23. The allegations of paragraphs 1 through 22 are incorporated herein by reference as though fully set forth herein.

24. Defendant alleges in its Petition for Cancellation that: (i) "[Defendant] began using the HUMANN mark in interstate commerce over a year before [Plaintiff's] first use in interstate commerce;" and (ii) the marks are similar in appearance, connotation, commercial appearance, the goods, and channels of trade to cause confusion in the marketplace.

25. Plaintiff does not contest that Defendant began using the "HUMANN mark" in 2016. Plaintiff does not use the "HUMANN mark" as its mark is comprised of the term "HVMN."

26. Plaintiff's HVMN Mark and the HPNC Marks are distinctive in terms of appearance, connotation, commercial appearance, the goods, and channels of trade.

27. As a result, there is no likelihood of confusion based on Plaintiff's use of its HVMN Mark. Notwithstanding the lack of confusion, Defendant has claimed that

1 Plaintiff's HVMN Mark constitutes trademark infringement, and has threatened to
2 bring a lawsuit against Plaintiff on this basis. Defendant has also indicated that this
3 dispute cannot be resolved unless HVMN abandons its trademark registration for the
4 HVMN Mark and change its company name. Such a demand threatens the viability of
5 Plaintiffs business, brand, reputation, and investments.

6 28. An actual, present, and justiciable controversy has arisen between
7 Plaintiff and Defendant concerning Plaintiff's rights to the HVMN Mark.

8 29. The substantial controversy between the parties warrants relief declaring
9 the rights and liabilities of the parties pursuant to 28 U.S.C. § 2201, and declaring and
10 finding that Plaintiff has not infringed Defendant's registrations for the HPNC Marks
11 and that Defendant has no right to exclude or prohibit Plaintiff from using or
12 registering its HVMN Mark in connection with the HVMN Goods and for those goods
13 within the zone of natural expansion.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff PRAYS FOR RELIEF for an Order and Judgment
16 against Defendant as follows:

- 17 A. Judgment be entered in favor of Plaintiff against Defendant as to the
18 above Count;
- 19 B. A declaratory judgment that Plaintiff's HVMN Mark does not infringe
20 Defendant's HPNC Marks;
- 21 C. A declaratory judgment that Defendant has no right to exclude or
22 prohibit Plaintiff from using or registering its HVMN Mark in
23 connection with the HVMN Goods and for those goods within the zone
24 of natural expansion;
- 25 D. Defendant be ordered to pay costs of this action, including attorneys'
26 fees incurred by Plaintiff in connection with this lawsuit; and
- 27 E. Such other and further relief as this Court deems just and proper.
28

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38 and Civil Local Rule 3-6,
Plaintiff hereby demands a jury trial on all issues so triable.

DATED: September 10, 2018

BLANK ROME LLP

By: /s/ Jessica A. McElroy_____
Jeffrey Rosenfeld
Jessica A. McElroy
Attorneys for Plaintiff
HVMN Inc.

EXHIBIT A

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Mark: HVMN

HVMN

US Serial Number: 87351512

Application Filing Date: Feb. 27, 2017

US Registration Number: 5361363

Registration Date: Dec. 19, 2017

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

Status: A cancellation proceeding is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Jan. 04, 2018

Publication Date: Aug. 15, 2017

Notice of Allowance Date: Oct. 10, 2017

Mark Information

Mark Literal Elements: HVMN

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

International Registration Number: 1352823

International Application(s)/Registration(s) Based on this Property: A0065596/1352823

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Sports performance drinks

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 27, 2017

Use in Commerce: Jun. 27, 2017

For: Cereal based energy bars; candy

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 27, 2017

Use in Commerce: Jun. 27, 2017

For: Dietary and nutritional supplements; dietary and nutritional supplements containing ketones; liquid protein supplements, namely, ketogenic protein supplement shakes and drinks; nutritional supplements energy bars; nutritional supplements in the form of energy gels, pastes and chews

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 27, 2017

Use in Commerce: Jun. 27, 2017

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: HVMN INC.

Owner Address: 505 MONTGOMERY STREET
SUITE 1025
SAN FRANCISCO, CALIFORNIA 94111
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Zachary A. Aria

Docket Number: 144119-00101

Attorney Primary Email Address: aria@blankrome.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ZACHARY A ARIA
BLANK ROME LLP
ONE LOGAN SQUARE
PHILADELPHIA, PENNSYLVANIA 19103
UNITED STATES

Phone: 215-569-5347

Fax: 215-832-5347

Correspondent e-mail: aria@blankrome.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jan. 04, 2018	CANCELLATION INSTITUTED NO. 999999	67643
Dec. 19, 2017	REGISTERED-PRINCIPAL REGISTER	
Nov. 17, 2017	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Nov. 16, 2017	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Nov. 09, 2017	STATEMENT OF USE PROCESSING COMPLETE	66230
Oct. 24, 2017	USE AMENDMENT FILED	66230
Nov. 07, 2017	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66230
Oct. 24, 2017	TEAS STATEMENT OF USE RECEIVED	
Oct. 10, 2017	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	

Aug. 15, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Aug. 15, 2017	PUBLISHED FOR OPPOSITION	
Jul. 26, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jul. 19, 2017	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jul. 03, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 28, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	70138
Jun. 28, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	70138
Jun. 25, 2017	ASSIGNED TO LIE	70138
May 26, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 22, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
May 22, 2017	NON-FINAL ACTION E-MAILED	6325
May 22, 2017	NON-FINAL ACTION WRITTEN	81852
May 22, 2017	ASSIGNED TO EXAMINER	81852
Mar. 07, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 02, 2017	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Nov. 16, 2017

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: HVMN INC.

Assignment 1 of 1

Conveyance: CHANGE OF NAME

Reel/Frame: [6102/0139](#)

Pages: 5

Date Recorded: Jul. 10, 2017

Supporting Documents: [assignment-tm-6102-0139.pdf](#)

Assignor

Name: [NOOTROBOX, INC.](#)

Execution Date: Jun. 26, 2017

Legal Entity Type: CORPORATION

State or Country Where Organized: No Place Where Organized Found

Assignee

Name: [HVMN INC.](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 505 MONTGOMERY STREET
SUITE 1025
SAN FRANCISCO, CALIFORNIA 94111

Correspondent

Correspondent Name: ZACHARY A. ARIA

Correspondent Address: BLANK ROME LLP
ONE LOGAN SQUARE, 8TH FLOOR
PHILADELPHIA, PA 19103

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Cancellation

Proceeding [92067643](#)

Filing Date: Dec 29, 2017

Number: _____

Status: Pending

Status Date: Dec 29, 2017

Interlocutory Attorney: WENDY COHEN

Defendant

Name: HVMN Inc.

Correspondent ZACHARY A ARIA
 Address: BLANK ROME LLP
 ONE LOGAN SQUARE
 PHILADELPHIA PA , 19103
 UNITED STATES

Correspondent e-mail: aria@blankrome.com , saryani-sabet@blankrome.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
HVMN	Cancellation Pending	87351512	5361363

Plaintiff(s)

Name: Human Power of N Company

Correspondent STEVEN D SMIT
 Address: GRAVES DOUGHERTY HEARON & MOODY PC
 401 CONGRESS AVENUE SUITE 2200
 AUSTIN TX , 78701
 UNITED STATES

Correspondent e-mail: trademarks@gdhn.com , ssmit@gdhn.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
HUMANN	Registered	86860810	5351133
HUMAN N	Registered	87024417	5355870

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 29, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jan 04, 2018	Feb 13, 2018
3	PENDING, INSTITUTED	Jan 04, 2018	
4	ANSWER	Feb 06, 2018	
5	P DISCL OF WITNESS WHO MAY OFFER TEST	Aug 13, 2018	
6	D MOTION	Aug 13, 2018	

United States of America

United States Patent and Trademark Office

HVMN

Reg. No. 5,361,363

Registered Dec. 19, 2017

Int. Cl.: 5, 30, 32

Trademark

Principal Register

HVMN INC. (DELAWARE CORPORATION)
505 Montgomery Street
Suite 1025
San Francisco, CALIFORNIA 94111

CLASS 5: Dietary and nutritional supplements; dietary and nutritional supplements containing ketones; liquid protein supplements, namely, ketogenic protein supplement shakes and drinks; nutritional supplements energy bars; nutritional supplements in the form of energy gels, pastes and chews

FIRST USE 6-27-2017; IN COMMERCE 6-27-2017

CLASS 30: Cereal based energy bars; candy

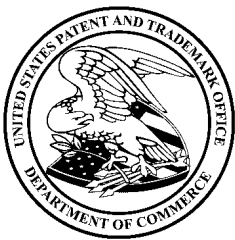
FIRST USE 6-27-2017; IN COMMERCE 6-27-2017

CLASS 32: Sports performance drinks

FIRST USE 6-27-2017; IN COMMERCE 6-27-2017

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-351,512, FILED 02-27-2017



Joseph Matol

Performing the Functions and Duties of the
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT B

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Mark: HUMANN

HUMANN

US Serial Number: 86860810

Application Filing Date: Dec. 29, 2015

US Registration Number: 5351133

Registration Date: Dec. 05, 2017

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 05, 2017

Publication Date: Nov. 01, 2016

Notice of Allowance Date: Dec. 27, 2016

Mark Information

Mark Literal Elements: HUMANN

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Light Beverages in the nature of instant flavored drinks, namely, fruit, grain, and vegetable juices and soft drinks; preparations in liquid or powder form for making non-alcoholic fruit, vegetable, herbal, and cola beverages, namely, fruit, grain, and vegetable juices and combinations thereof

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2016

Use in Commerce: Nov. 09, 2016

For: Meats and Processed Foods in the nature of preserved, dried and cooked fruits and vegetable; jellies and jams

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2016

Use in Commerce: Nov. 09, 2016

For: Pharmaceuticals in the nature of health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods, namely, bars, powders, tablets, gummies, chews, and capsules containing combinations of protein, fruits, vegetables, grains, amino acids, minerals, nutrients and vitamins; beverages, namely, ready to drink and powdered drink mixes containing combinations of protein, fruits, vegetables, grains, amino acids, fortified with mineral, nutrients, and vitamins

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2016

Use in Commerce: Jun. 01, 2016

Basis Information (Case Level)

Filed Use: No

Currently Use: Yes

Amended Use: No

Filed ITU: Yes

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: HUMAN POWER OF N COMPANY

Owner Address: 1120 S CAPITAL OF TEXAS HWY
BLDG 1 SUITE 210
AUSTIN, TEXAS UNITED STATES 78746

Legal Entity Type: CORPORATION

State or Country Where Organized: TEXAS

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Steven D. Smit

Docket Number: A13805.12

Attorney Primary Email Address: trademarks@gdhm.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: STEVEN D. SMIT
GRAVES, DOUGHERTY, HEARON, & MOODY P.C.
401 CONGRESS AVENUE SUITE 2200
AUSTIN, TEXAS UNITED STATES 78701

Phone: 512.480.4653

Fax: 512.480.5853

Correspondent e-mail: trademarks@gdhm.com ssmit@gdhm.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jan. 31, 2018	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jan. 10, 2018	POST REGISTRATION ACTION MAILED NO RESPONSE REQUIRED	71378
Jan. 08, 2018	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	71378
Dec. 12, 2017	TEAS VOLUNTARY AMENDMENT RECEIVED	
Dec. 05, 2017	REGISTERED-PRINCIPAL REGISTER	
Oct. 28, 2017	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Oct. 27, 2017	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 24, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
Oct. 24, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
Oct. 17, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 27, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Apr. 27, 2017	NON-FINAL ACTION E-MAILED	
Apr. 27, 2017	SU - NON-FINAL ACTION - WRITTEN	81095
Apr. 15, 2017	STATEMENT OF USE PROCESSING COMPLETE	71034

Jan. 18, 2017	USE AMENDMENT FILED	71034
Mar. 22, 2017	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Feb. 06, 2017	CASE ASSIGNED TO INTENT TO USE PARALEGAL	71034
Jan. 18, 2017	TEAS STATEMENT OF USE RECEIVED	
Dec. 27, 2016	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Nov. 01, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Nov. 01, 2016	PUBLISHED FOR OPPOSITION	
Oct. 12, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Sep. 27, 2016	LAW OFFICE PUBLICATION REVIEW COMPLETED	68171
Sep. 21, 2016	ASSIGNED TO LIE	68171
Sep. 06, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 13, 2016	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Jun. 21, 2016	WITHDRAWN FROM PUB - OG REVIEW QUERY	99910
Jun. 04, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 04, 2016	EXAMINER'S AMENDMENT ENTERED	88888
Jun. 04, 2016	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Jun. 04, 2016	EXAMINERS AMENDMENT E-MAILED	6328
Jun. 04, 2016	EXAMINERS AMENDMENT -WRITTEN	81095
Jun. 01, 2016	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
May 31, 2016	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
May 31, 2016	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Apr. 19, 2016	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Apr. 19, 2016	NON-FINAL ACTION E-MAILED	6325
Apr. 19, 2016	NON-FINAL ACTION WRITTEN	81095
Apr. 14, 2016	ASSIGNED TO EXAMINER	81095
Jan. 09, 2016	NOTICE OF PSEUDO MARK E-MAILED	
Jan. 08, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 01, 2016	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMEG LAW OFFICE 105

Date in Location: Jan. 10, 2018

Assignment Abstract Of Title Information

Summary

Total Assignments: 2

Registrant: HUMAN POWER OF N COMPANY, INC.

Assignment 1 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [6009/0115](#)

Pages: 2

Date Recorded: Mar. 09, 2017

Supporting Documents: [assignment-tm-6009-0115.pdf](#)

Assignor

Name: [NEOGENIS LABORATORIES, INC.](#)

Execution Date: Apr. 20, 2016

Legal Entity Type: CORPORATION

State or Country: TEXAS

Where Organized:

Assignee

Name: [HUMAN POWER OF N COMPANY, INC.](#)

Legal Entity Type: CORPORATION

State or Country: TEXAS

Where Organized:

Address: 1120 S. CAPITAL OF TEXAS HWY
BUILDING 1, SUITE 210
AUSITN, TEXAS 78746

Correspondent

Correspondent Name: STEVEN D. SMIT

Correspondent Address: 401 CONGRESS AVENUE, SUITE 2200
AUSTIN, TX 78701

Domestic Representative - Not Found**Assignment 2 of 2**

Conveyance: CHANGE OF NAME

Reel/Frame: [6247/0502](#)

Pages: 4

Date Recorded: Jan. 11, 2018

Supporting Documents: [assignment-tm-6247-0502.pdf](#)

Assignor

Name: [HUMAN POWER OF N COMPANY, INC.](#)

Execution Date: Jan. 11, 2018

Legal Entity Type: CORPORATION

State or Country Where Organized: TEXAS

DBA, AKA, TA, Formerly: FORMERLY NEOGENIS LABORATORIES

Assignee

Name: [HUMAN POWER OF N COMPANY](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: TEXAS

Address: 1120 S CAPITAL OF TEXAS HWY
BLDG 1 SUITE 210
AUSTIN, TEXAS 78746

Correspondent

Correspondent Name: STEVEN D. SMIT/GRAVES, DOUGHERTY, HEARON

Correspondent Address: 401 CONGRESS AVENUE
SUITE 2200
AUSTIN, TX 78701

Domestic Representative - Not Found**Proceedings****Summary**

Number of Proceedings: 1

Type of Proceeding: Cancellation

Proceeding Number: [92067643](#)

Filing Date: Dec 29, 2017

Status: Pending

Status Date: Dec 29, 2017

Interlocutory Attorney: WENDY COHEN

Defendant

Name: HVMN Inc.

Correspondent Address: ZACHARY A ARIA
BLANK ROME LLP
ONE LOGAN SQUARE
PHILADELPHIA PA UNITED STATES , 19103

Correspondent e-mail: aria@blankrome.com , saryani-sabet@blankrome.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
HVMN	Cancellation Pending	87351512	5361363

Plaintiff(s)

Name: Human Power of N Company

Correspondent STEVEN D SMIT
Address: GRAVES DOUGHERTY HEARON & MOODY PC
 401 CONGRESS AVENUE SUITE 2200
 AUSTIN TX UNITED STATES , 78701

Correspondent e-mail: trademarks@gdhm.com , ssmit@gdhm.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
HUMANN	Registered	86860810	5351133
HUMAN N	Registered	87024417	5355870

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 29, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jan 04, 2018	Feb 13, 2018
3	PENDING, INSTITUTED	Jan 04, 2018	
4	ANSWER	Feb 06, 2018	
5	P DISCL OF WITNESS WHO MAY OFFER TEST	Aug 13, 2018	
6	D MOTION	Aug 13, 2018	

United States of America

United States Patent and Trademark Office

HUMANN

Reg. No. 5,351,133

Registered Dec. 05, 2017

Int. Cl.: 5, 29, 32

Trademark

Principal Register

HUMAN POWER OF N COMPANY, INC. (TEXAS CORPORATION)
1120 S. Capital Of Texas Hwy
Building 1, Suite 210
Austin, TEXAS 78746

CLASS 5: Pharmaceuticals in the nature of health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods, namely, bars, powders, tablets, gummies, chews, and capsules containing combinations of protein, fruits, vegetables, grains, amino acids, minerals, nutrients and vitamins; beverages, namely, ready to drink and powdered drink mixes containing combinations of protein, fruits, vegetables, grains, amino acids, fortified with mineral, nutrients, and vitamins

FIRST USE 6-1-2016; IN COMMERCE 6-1-2016

CLASS 29: Meats and Processed Foods in the nature of preserved, dried and cooked fruits and vegetable; jellies and jams

FIRST USE 6-1-2016; IN COMMERCE 11-9-2016

CLASS 32: Light Beverages in the nature of instant flavored drinks, namely, fruit, grain, and vegetable juices and soft drinks; preparations in liquid or powder form for making non-alcoholic fruit, vegetable, herbal, and cola beverages, namely, fruit, grain, and vegetable juices and combinations thereof

FIRST USE 6-1-2016; IN COMMERCE 11-9-2016

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 86-860,810, FILED 12-29-2015



Joseph Matol

Performing the Functions and Duties of the
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years***What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods***What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

Generated on: This page was generated by TSDR on 2018-09-06 17:53:22 EDT

Mark: HUMAN N

humanⁿ

US Serial Number: 87024417

Application Filing Date: May 04, 2016

US Registration Number: 5355870

Registration Date: Dec. 12, 2017

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 12, 2017

Publication Date: Feb. 28, 2017

Notice of Allowance Date: Apr. 25, 2017

Mark Information

Mark Literal Elements: HUMAN N

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the word "human" with an additional raised "n" at the end.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 24.17.25 - Biohazard symbol; Degree sign (°); Equal sign (=); Pound sign (#); Handicapped symbol; Hazardous materials symbol; Less than symbol < (mathematical); Greater than symbol > (mathematical)

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Fruit and vegetable beverages, instant fruit and vegetable flavored drinks, soft drinks, and other preparations in liquid or powder form for making nonalcoholic fruit, vegetable, herbal, and cola beverages

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2016

Use in Commerce: Jun. 01, 2016

For: Processed meats and processed foods, namely, preserved, dried, and cooked fruits and vegetables; jellies and jams

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 01, 2016

Use in Commerce: Jun. 25, 2016

For: Pharmaceuticals, health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods and beverages adapted for medical purposes; dietary and nutritional supplements; herbal supplements; vitamin and mineral supplements; dietary supplements for weight-loss or energy boosting in the nature of powders, tablets, capsules, lozenges, and nutritional supplement meal replacement bars for boosting energy, and immunity boosting nutritional supplements

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class(es):**Class Status:** ACTIVE**Basis:** 1(a)**First Use:** Jun. 01, 2016**Use in Commerce:** Jun. 25, 2016**Basis Information (Case Level)**

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information**Owner Name:** HUMAN POWER OF N COMPANY

Owner Address: 1120 S CAPITAL OF TEXAS HWY
BLDG 1 SUITE 210
AUSTIN, TEXAS 78746
UNITED STATES

Legal Entity Type: CORPORATION

State or Country TEXAS
Where Organized:

Attorney/Correspondence Information**Attorney of Record****Attorney Name:** Steven D. Smit**Docket Number:** A13805.12

Attorney Primary trademarks@gdhm.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent STEVEN D. SMIT
Name/Address: GRAVES, DOUGHERTY, HEARON, & MOODY P.C.
401 CONGRESS AVENUE SUITE 2200
AUSTIN, TEXAS 78701
UNITED STATES

Phone: 512.480.5600**Fax:** 512.480.5853

Correspondent e-mail: trademarks@gdhm.com ssmit@gdhm.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found**Prosecution History**

Date	Description	Proceeding Number
Jan. 31, 2018	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Dec. 12, 2017	REGISTERED-PRINCIPAL REGISTER	
Nov. 07, 2017	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Nov. 05, 2017	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 03, 2017	STATEMENT OF USE PROCESSING COMPLETE	65362
Sep. 19, 2017	USE AMENDMENT FILED	65362
Sep. 28, 2017	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Sep. 19, 2017	TEAS STATEMENT OF USE RECEIVED	
Apr. 25, 2017	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Mar. 22, 2017	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Feb. 28, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 28, 2017	PUBLISHED FOR OPPOSITION	
Feb. 08, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 23, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	

Jan. 20, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 20, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 20, 2017	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Aug. 21, 2016	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Aug. 21, 2016	NON-FINAL ACTION E-MAILED	6325
Aug. 21, 2016	NON-FINAL ACTION WRITTEN	69965
Aug. 19, 2016	ASSIGNED TO EXAMINER	69965
May 09, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 07, 2016	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Nov. 05, 2017

Assignment Abstract Of Title Information

Summary

Total Assignments: 2

Registrant: HUMAN POWER OF N COMPANY, INC.

Assignment 1 of 2

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [6009/0115](#)

Pages: 2

Date Recorded: Mar. 09, 2017

Supporting Documents: [assignment-tm-6009-0115.pdf](#)

Assignor

Name: [NEOGENIS LABORATORIES, INC.](#)

Execution Date: Apr. 20, 2016

Legal Entity Type: CORPORATION

State or Country TEXAS
Where Organized:

Assignee

Name: [HUMAN POWER OF N COMPANY, INC.](#)

Legal Entity Type: CORPORATION

State or Country TEXAS
Where Organized:

Address: 1120 S. CAPITAL OF TEXAS HWY
BUILDING 1, SUITE 210
AUSITN, TEXAS 78746

Correspondent

Correspondent Name: STEVEN D. SMIT

Correspondent Address: 401 CONGRESS AVENUE, SUITE 2200
AUSTIN, TX 78701

Domestic Representative - Not Found

Assignment 2 of 2

Conveyance: CHANGE OF NAME

Reel/Frame: [6247/0502](#)

Pages: 4

Date Recorded: Jan. 11, 2018

Supporting Documents: [assignment-tm-6247-0502.pdf](#)

Assignor

Name: [HUMAN POWER OF N COMPANY, INC.](#)

Execution Date: Jan. 11, 2018

Legal Entity Type: CORPORATION

State or Country TEXAS
Where Organized:

DBA, AKA, TA, Formerly: FORMERLY NEOGENIS LABORATORIES

Assignee

Name: [HUMAN POWER OF N COMPANY](#)

Legal Entity Type: CORPORATION

State or Country TEXAS
Where Organized:Address: 1120 S CAPITAL OF TEXAS HWY
BLDG 1 SUITE 210
AUSTIN, TEXAS 78746

Correspondent

Correspondent Name: STEVEN D. SMIT/GRAVES, DOUGHERTY, HEARON

Correspondent Address: 401 CONGRESS AVENUE
SUITE 2200
AUSTIN, TX 78701

Domestic Representative - Not Found

Proceedings

Summary

Number of 1
Proceedings:

Type of Proceeding: Cancellation

Proceeding Number: [92067643](#)

Filing Date: Dec 29, 2017

Status: Pending

Status Date: Dec 29, 2017

Interlocutory Attorney: WENDY COHEN

Defendant

Name: HVMN Inc.

Correspondent Address: ZACHARY A ARIA
BLANK ROME LLP
ONE LOGAN SQUARE
PHILADELPHIA PA , 19103
UNITED STATESCorrespondent e-mail: aria@blankrome.com , saryani-sabet@blankrome.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
HVMN	Cancellation Pending	87351512	5361363

Plaintiff(s)

Name: Human Power of N Company

Correspondent Address: STEVEN D SMIT
GRAVES DOUGHERTY HEARON & MOODY PC
401 CONGRESS AVENUE SUITE 2200
AUSTIN TX , 78701
UNITED STATESCorrespondent e-mail: trademarks@gdhm.com , ssmit@gdhm.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
HUMANN	Registered	86860810	5351133
HUMAN N	Registered	87024417	5355870

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 29, 2017	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Jan 04, 2018	Feb 13, 2018
3	PENDING, INSTITUTED	Jan 04, 2018	
4	ANSWER	Feb 06, 2018	
5	P DISCL OF WITNESS WHO MAY OFFER TEST	Aug 13, 2018	
6	D MOTION	Aug 13, 2018	

United States of America

United States Patent and Trademark Office

humanⁿ

Reg. No. 5,355,870

Registered Dec. 12, 2017

Int. Cl.: 5, 29, 32

Trademark

Principal Register

HUMAN POWER OF N COMPANY, INC. (TEXAS CORPORATION)

Bldg 1, Suite 210

1120 S. Capital Of Tx Hwy, Bld 1 Ste 210

Ausitn, TEXAS 78746

CLASS 5: Pharmaceuticals, health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods and beverages adapted for medical purposes; dietary and nutritional supplements; herbal supplements; vitamin and mineral supplements; dietary supplements for weight-loss or energy boosting in the nature of powders, tablets, capsules, lozenges, and nutritional supplement meal replacement bars for boosting energy, and immunity boosting nutritional supplements

FIRST USE 6-1-2016; IN COMMERCE 6-25-2016

CLASS 29: Processed meats and processed foods, namely, preserved, dried, and cooked fruits and vegetables; jellies and jams

FIRST USE 6-1-2016; IN COMMERCE 6-25-2016

CLASS 32: Fruit and vegetable beverages, instant fruit and vegetable flavored drinks, soft drinks, and other preparations in liquid or powder form for making nonalcoholic fruit, vegetable, herbal, and cola beverages

FIRST USE 6-1-2016; IN COMMERCE 6-1-2016

The mark consists of the word "human" with an additional raised "n" at the end.

SER. NO. 87-024,417, FILED 05-04-2016



Joseph Matol

Performing the Functions and Duties of the
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years***What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods***What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT C

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1553 (Rev 09/2005)

OMB No. 0651-0054 (Exp 10/31/2017)

Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87024417
LAW OFFICE ASSIGNED	LAW OFFICE 114
EXTENSION OF USE	NO
MARK SECTION	
MARK FILE NAME	https://tmng-al.uspto.gov/resting2/api/img/87024417/large
LITERAL ELEMENT	HUMAN N
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
OWNER SECTION (current)	
NAME	HUMAN POWER OF N COMPANY, INC.
INTERNAL ADDRESS	1120 S. CAPITAL OF TEXAS HWY
STREET	BUILDING 1, SUITE 210
CITY	AUSITN
STATE	Texas
ZIP/POSTAL CODE	78746
COUNTRY	United States
OWNER SECTION (proposed)	
NAME	HUMAN POWER OF N COMPANY
INTERNAL ADDRESS	Bldg 1, Suite 210
STREET	1120 S. Capital of TX Hwy, Bld 1 Ste 210
CITY	AUSTIN
STATE	Texas
ZIP/POSTAL CODE	78746
COUNTRY	United States
PHONE	512-732-2240
EMAIL	bril@humann.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	005
	Pharmaceuticals, health and wellness products, namely, nutraceuticals for

CURRENT IDENTIFICATION	use as dietary supplements, dietetic and functional foods and beverages adapted for medical purposes; dietary and nutritional supplements; herbal supplements; vitamin and mineral supplements; dietary supplements for weight-loss or energy boosting in the nature of powders, tablets, capsules, lozenges, and nutritional supplement meal replacement bars for boosting energy, and immunity boosting nutritional supplements
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	06/01/2016
FIRST USE IN COMMERCE DATE	06/25/2016
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\870\244\87024417.xml8\SOU0002.JPG
SPECIMEN DESCRIPTION	Labeled canister of functional food and wellness and dietary supplement powder product called Protein40, using the "human n" mark
INTERNATIONAL CLASS	029
CURRENT IDENTIFICATION	Processed meats and processed foods, namely, preserved, dried, and cooked fruits and vegetables; jellies and jams
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	06/01/2016
FIRST USE IN COMMERCE DATE	06/25/2016
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\870\244\87024417.xml8\SOU0003.JPG
SPECIMEN DESCRIPTION	Labeled canister of product called Superbeets containing dried vegetables (beetroot) with the "human n" mark
INTERNATIONAL CLASS	030
CURRENT IDENTIFICATION	Fruit sauces excluding cranberry sauce and applesauce
GOODS OR SERVICES	DELETE ALL ITU GOODS/SERVICES IN THIS CLASS
INTERNATIONAL CLASS	032
CURRENT IDENTIFICATION	Fruit and vegetable beverages, instant fruit and vegetable flavored drinks, soft drinks, and other preparations in liquid or powder form for making nonalcoholic fruit, vegetable, herbal, and cola beverages
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	06/01/2016
FIRST USE IN COMMERCE DATE	06/01/2016
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\870\244\87024417.xml8\SOU0004.JPG
SPECIMEN DESCRIPTION	Labeled canister of vegetable drink powder product called HeartGreens, using the "human n" mark
REQUEST TO DIVIDE	NO
PAYMENT SECTION	
NUMBER OF CLASSES IN USE	3
SUBTOTAL AMOUNT [ALLEGATION OF USE FEE]	300
TOTAL AMOUNT	300
SIGNATURE SECTION	

DECLARATION SIGNATURE	/Bril Flint/
SIGNATORY'S NAME	Bril Flint
SIGNATORY'S POSITION	Chief Supply Chain Officer
DATE SIGNED	09/19/2017
SIGNATORY'S PHONE NUMBER	512-732-2240
FILING INFORMATION	
SUBMIT DATE	Tue Sep 19 09:49:02 EDT 2017
TEAS STAMP	USPTO/SOU-XX.XX.XXX.XX-20 170919094902343138-870244 17-5108abd7ec62d186227a1d 2a9e789afcd3d0cb6868711 087f7a4554ab08d29ab-CC-90 58-20170919092154771704

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1553 (Rev 09/2005)

OMB No. 0651-0054 (Exp 10/31/2017)

Trademark/Service Mark Statement of Use
(15 U.S.C. Section 1051(d))

To the Commissioner for Trademarks:

MARK: HUMAN N (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/87024417/large>)

SERIAL NUMBER: 87024417

The applicant, HUMAN POWER OF N COMPANY, having an address of

Bldg 1, Suite 210

1120 S. Capital of TX Hwy, Bld 1 Ste 210

AUSTIN, Texas 78746

United States

512-732-2240

bril@humann.com (authorized)

is submitting the following allegation of use information:

For International Class 005:

Current identification: Pharmaceuticals, health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods and beverages adapted for medical purposes; dietary and nutritional supplements; herbal supplements; vitamin and mineral supplements; dietary supplements for weight-loss or energy boosting in the nature of powders, tablets, capsules, lozenges, and nutritional supplement meal replacement bars for boosting energy, and immunity boosting nutritional supplements

The mark is in use in commerce on or in connection with all of the goods/services, or to indicate membership in the collective organization listed in the application or Notice of Allowance or as subsequently modified for this specific class.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 06/01/2016, and first used in commerce at least as early as 06/25/2016, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Labeled canister of functional food and wellness and dietary supplement powder product called Protein40, using the "human n" mark.

[Specimen File1](#)

For International Class 029:

Current identification: Processed meats and processed foods, namely, preserved, dried, and cooked fruits and vegetables; jellies and jams

The mark is in use in commerce on or in connection with all of the goods/services, or to indicate membership in the collective organization listed in the application or Notice of Allowance or as subsequently modified for this specific class.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 06/01/2016, and first used in commerce at least as early as 06/25/2016, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Labeled canister of product called Superbeets containing dried vegetables (beetroot) with the "human n" mark.

[Specimen File1](#)

For International Class 030:

Current identification: Fruit sauces excluding cranberry sauce and applesauce

All ITU goods/services in this class are to be deleted

For International Class 032:

Current identification: Fruit and vegetable beverages, instant fruit and vegetable flavored drinks, soft drinks, and other preparations in liquid or powder form for making nonalcoholic fruit, vegetable, herbal, and cola beverages

The mark is in use in commerce on or in connection with all of the goods/services, or to indicate membership in the collective organization listed in the application or Notice of Allowance or as subsequently modified for this specific class.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 06/01/2016, and first used in commerce at least as early as 06/01/2016, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Labeled canister of vegetable drink powder product called HeartGreens, using the "human n" mark.

[Specimen File1](#)

The applicant is not filing a Request to Divide with this Allegation of Use form.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for the allegation of use for 3 classes.

Declaration

The signatory believes that the applicant is the owner of the mark sought to be registered.

For a trademark or service mark application, the mark is in use in commerce on or in connection with all the goods/services in the application or notice of allowance, or as subsequently modified.

For a collective trademark, collective service mark, collective membership mark application, the applicant is exercising legitimate control over the use of the mark in commerce by members on or in connection with all the goods/services/collective membership organization in the application or notice of allowance, or as subsequently modified.

For a certification mark application, the applicant is exercising legitimate control over the use of the mark in commerce by authorized users on or in connection with the all goods/services in the application or notice of allowance, or as subsequently modified, and the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

The specimen(s) shows the mark as used on or in connection with the goods/services/collective membership organization in commerce.

To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.

To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature: /Bril Flint/ Date Signed: 09/19/2017

Signatory's Name: Bril Flint

Signatory's Position: Chief Supply Chain Officer

Signatory's Phone: 512-732-2240

RAM Sale Number: 87024417

RAM Accounting Date: 09/19/2017

Serial Number: 87024417

Internet Transmission Date: Tue Sep 19 09:49:02 EDT 2017

TEAS Stamp: USPTO/SOU-XX.XX.XXX.XX-20170919094902343

138-87024417-5108abd7ec62d186227a1d2a9e7

89afcdfd3d0cb6868711087f7a4554ab08d29ab-

CC-9058-20170919092154771704







FEE RECORD SHEET

Serial Number: 87024417



RAM Sale Number: 87024417

Total Fees: \$300

RAM Accounting Date: 20170919

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
Statement of Use (SOU)	7003	20170919	\$100	3	\$300

Transaction Date: 20170919



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PTO Form 1553 (Rev 09/2005)

OMB No. 0651-0054 (Exp 10/31/2017)

Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86860810
LAW OFFICE ASSIGNED	LAW OFFICE 105
EXTENSION OF USE	NO
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/86860810/large
LITERAL ELEMENT	HUMANN
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
OWNER SECTION (current)	
NAME	Neogenis Laboratories, Inc.
INTERNAL ADDRESS	Building 1, Suite 210
STREET	1120 S. Capital of Texas Hwy
CITY	Austin
STATE	Texas
ZIP/POSTAL CODE	78746
COUNTRY	United States
OWNER SECTION (proposed)	
NAME	Human Power of N Company, Inc. fka Neogenis Laboratories, Inc.
INTERNAL ADDRESS	Building 1, Suite 210
STREET	1120 S. Capital of Texas Hwy
CITY	Austin
STATE	Texas
ZIP/POSTAL CODE	78746
COUNTRY	United States
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	005
	Pharmaceuticals in the nature of health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods, namely, bars, powders, tablets, gummies, chews, and capsules containing

CURRENT IDENTIFICATION	combinations of protein, fruits, vegetables, grains, amino acids, minerals, nutrients and vitamins; beverages, namely, ready to drink and powdered drink mixes containing combinations of protein, fruits, vegetables, grains, amino acids, fortified with mineral, nutrients, and vitamins
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	06/01/2016
FIRST USE IN COMMERCE DATE	06/01/2016
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\868\608\86860810\xml6\SOU0002.JPG
SPECIMEN DESCRIPTION	Photo of product label
INTERNATIONAL CLASS	029
CURRENT IDENTIFICATION	Meats and Processed Foods in the nature of preserved, dried and cooked fruits and vegetable; jellies and jams
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	06/01/2016
FIRST USE IN COMMERCE DATE	11/09/2016
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\868\608\86860810\xml6\SOU0003.JPG
SPECIMEN DESCRIPTION	Photo of product label
INTERNATIONAL CLASS	030
CURRENT IDENTIFICATION	Fruit sauces excluding cranberry sauce and applesauce
GOODS OR SERVICES	DELETE ALL ITU GOODS/SERVICES IN THIS CLASS
INTERNATIONAL CLASS	032
CURRENT IDENTIFICATION	Light Beverages in the nature of instant flavored drinks, namely, fruit, grain, and vegetable juices and soft drinks; preparations in liquid or powder form for making non-alcoholic fruit, vegetable, herbal, and cola beverages, namely, fruit, grain, and vegetable juices and combinations thereof
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	06/01/2016
FIRST USE IN COMMERCE DATE	11/09/2016
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\868\608\86860810\xml6\SOU0004.JPG
SPECIMEN DESCRIPTION	Photo of product label
REQUEST TO DIVIDE	NO
PAYMENT SECTION	
NUMBER OF CLASSES IN USE	3
SUBTOTAL AMOUNT [ALLEGATION OF USE FEE]	300
TOTAL AMOUNT	300
SIGNATURE SECTION	
DECLARATION SIGNATURE	/AnnMarie A. Kocher/
SIGNATORY'S NAME	/AnnMarie A. Kocher/

SIGNATORY'S POSITION	President
DATE SIGNED	01/18/2017
FILING INFORMATION	
SUBMIT DATE	Wed Jan 18 11:45:55 EST 2017
TEAS STAMP	USPTO/SOU-XXX.XXX.XXX.XXX -20170118114555902238-868 60810-5804244e8244f1a5eb2 343d334e67126d158d70584a5 f14a0b3f04fc916412eaac-DA -10737-201701171313511342 87

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1553 (Rev 09/2005)

OMB No. 0651-0054 (Exp 10/31/2017)

**Trademark/Service Mark Statement of Use
(15 U.S.C. Section 1051(d))**

To the Commissioner for Trademarks:

MARK: HUMANN(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/86860810/large>)

SERIAL NUMBER: 86860810

The applicant, Human Power of N Company, Inc. fka Neogenis Laboratories, Inc., having an address of
Building 1, Suite 210
1120 S. Capital of Texas Hwy
Austin, Texas 78746
United States

is submitting the following allegation of use information:

For International Class 005:

Current identification: Pharmaceuticals in the nature of health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods, namely, bars, powders, tablets, gummies, chews, and capsules containing combinations of protein, fruits, vegetables, grains, amino acids, minerals, nutrients and vitamins; beverages, namely, ready to drink and powdered drink mixes containing combinations of protein, fruits, vegetables, grains, amino acids, fortified with mineral, nutrients, and vitamins

The mark is in use in commerce on or in connection with all of the goods/services, or to indicate membership in the collective organization listed in the application or Notice of Allowance or as subsequently modified for this specific class.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 06/01/2016, and first used in commerce at least as early as 06/01/2016, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Photo of product label.

[Specimen File1](#)

For International Class 029:

Current identification: Meats and Processed Foods in the nature of preserved, dried and cooked fruits and vegetable; jellies and jams

The mark is in use in commerce on or in connection with all of the goods/services, or to indicate membership in the collective organization listed in the application or Notice of Allowance or as subsequently modified for this specific class.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 06/01/2016, and first used in commerce at least as early as 11/09/2016, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Photo of product label.

[Specimen File1](#)

For International Class 030:

Current identification: Fruit sauces excluding cranberry sauce and applesauce

All ITU goods/services in this class are to be deleted

For International Class 032:

Current identification: Light Beverages in the nature of instant flavored drinks, namely, fruit, grain, and vegetable juices and soft drinks; preparations in liquid or powder form for making non-alcoholic fruit, vegetable, herbal, and cola beverages, namely, fruit, grain, and vegetable juices and combinations thereof

The mark is in use in commerce on or in connection with all of the goods/services, or to indicate membership in the collective organization listed in the application or Notice of Allowance or as subsequently modified for this specific class.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 06/01/2016, and first used in commerce at least as early as 11/09/2016, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Photo of product label.

[Specimen File1](#)

The applicant is not filing a Request to Divide with this Allegation of Use form.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for the allegation of use for 3 classes.

Declaration

The applicant is the owner of the mark sought to be registered.

For a trademark or service mark application, the mark is in use in commerce on or in connection with all the goods/services in the application or notice of allowance, or as subsequently modified.

For a collective trademark, collective service mark, collective membership mark application, the applicant is exercising legitimate control over the use of the mark in commerce by members on or in connection with all the goods/services/collective membership organization in the application or notice of allowance, or as subsequently modified.

For a certification mark application, the applicant is exercising legitimate control over the use of the mark in commerce by authorized users on or in connection with the all goods/services in the application or notice of allowance, or as subsequently modified, and the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

The specimen(s) shows the mark as used on or in connection with the goods/services/collective membership organization in commerce.

To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.

To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /AnnMarie A. Kocher/ Date Signed: 01/18/2017

Signatory's Name: /AnnMarie A. Kocher/

Signatory's Position: President

RAM Sale Number: 86860810

RAM Accounting Date: 01/18/2017

Serial Number: 86860810

Internet Transmission Date: Wed Jan 18 11:45:55 EST 2017

TEAS Stamp: USPTO/SOU-XXX.XXX.XXX.XXX-20170118114555

902238-86860810-5804244e8244f1a5eb2343d3

34e67126d158d70584a5f14a0b3f04fc916412ea

ac-DA-10737-20170117131351134287







FEE RECORD SHEET

Serial Number: 86860810



RAM Sale Number: 86860810

Total Fees: \$300

RAM Accounting Date: 20170118

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
Statement of Use (SOU)	7003	20170118	\$100	3	\$300

Transaction Date: 20170118



EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HUMAN POWER OF N COMPANY,)
 Petitioner,) Registration
) No.: 5,361,363
VS.)
) Cancellation
HVMN INC.,) No.: 92067643
 Registrant.)

ORAL DEPOSITION OF
KELLY HARRELSON
AUGUST 28, 2018

ORAL DEPOSITION OF KELLY HARRELSON, produced as a witness at the instance of the Registrant, and duly sworn, was taken in the above-styled and numbered cause on August 28, 2018, from 9:55 a.m. to 2:23 p.m., before Donna Wright, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of GRAVES DOUGHERTY HEARON & MOODY, 401 Congress Avenue, Suite 2200, Austin, Texas, pursuant to the provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE PETITIONER:

Mr. Steven D. Smit
GRAVES DOUGHERTY HEARON & MOODY
401 Congress Avenue
Suite 2200
Austin, Texas 78701
(512) 480-5600
ssmit@gdhm.com

FOR THE REGISTRANT:

Mr. Timothy D. Pescenye
BLANK ROME
130 North 18th Street
Philadelphia, Pennsylvania 19103
(215) 569-5347
pecsenye@blankrome.com

ALSO PRESENT:

Bril Flint

1 such a product presently on the marketplace. Okay?

2 A. You're going to share a list of products from
3 the company HumanN?

4 Q. Correct.

5 A. Okay.

6 MR. SMIT: And may I -- from which
7 trademark registration, because I think the HumanN
8 plain text versus the HumanN logo have different
9 products. There's a different recitation of products,
10 if I remember correctly.

11 MR. PECSENYE: You may be correct.

12 MR. SMIT: Okay.

13 MR. PECSENYE: I don't know which
14 registration. But I will represent to you that it is a
15 registration that the company owns.

16 MR. SMIT: Got it.

17 Q. (BY MR. PECSENYE) Nutraceuticals for use as
18 wellness products, does the company sell that?

19 A. Yes.

20 Q. Dietetic and functional foods?

21 A. Yes.

22 Q. Bars?

23 A. Are you asking if we actively sell bars?

24 Q. Correct.

25 A. The answer is no.

1 Q. Powders?

2 A. Yes.

3 Q. Tablets?

4 A. Yes.

5 Q. Gummies?

6 A. Actively selling, the answer is no.

7 Q. Chews?

8 A. No.

9 Q. Capsules containing combinations of protein,
10 fruits, vegetables, grains, amino acids, minerals,
11 nutrients, and vitamins?

12 A. Yes.

13 Q. Beverages?

14 A. We would have to be specific on beverages.
15 Our powders are considered a drink of sorts.

16 Q. But does the company actually sell any liquid
17 beverage?

18 A. Liquid beverages? Presently, no.

19 Q. Does the company sell any products for meats
20 and processed foods in the nature of preserve, dried,
21 and cooked fruits and vegetables?

22 A. I'm unfamiliar with that, if that incorporates
23 one of our products that I just wouldn't understand a
24 nuance in the formulation or not. I couldn't say on
25 that one specific. Sounds very technical.

1 Q. Any jellies or jams?

2 A. No.

3 Q. Any soft drinks?

4 A. Soft drinks such as --

5 Q. Like liquids?

6 A. Oh, liquids? No.

7 Q. So the company doesn't sell any liquid
8 products?

9 A. Today the company isn't selling liquid
10 products that are sold in a liquid form factor.

11 Q. But it does sell powdered products that are
12 intended to be put into a liquid?

13 A. That's correct. It sells a powder that's
14 intended to -- you drink it.

15 Q. Any cola beverages?

16 A. Cola?

17 Q. Yes.

18 A. As in -- like a soda water cola, or does that
19 mean --

20 Q. Well, I think cola generally connotes a
21 cola-flavored beverage.

22 A. Oh. I'm not aware of any products that we
23 have that carry that, but I'm not the expert in our
24 area of formulations and ingredients in our products.

25 Q. So let's go back to, I think, your hardcore

EXHIBIT E

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA868007**Filing date: **12/29/2017**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Human Power of N Company		
Entity	Corporation	Citizenship	Texas
Address	1120 S. Capital of Texas Highway Bldg. 1, Suite 210 Austin, TX 78746 UNITED STATES		

Attorney information	Steven D. Smit Graves, Dougherty, Hearon, & Moody P.C. 401 Congress Avenue, Suite 2200 Austin, TX 78701 UNITED STATES Email: trademarks@gdhm.com, ssmit@gdhm.com Phone: 512.480.5600
----------------------	--

Registration Subject to Cancellation

Registration No.	5361363	Registration date	12/19/2017
Registrant	HVMN INC. 505 MONTGOMERY STREET SUITE 1025 SAN FRANCISCO, CA 94111 UNITED STATES		


Goods/Services Subject to Cancellation


Class 005. First Use: 2017/06/27 First Use In Commerce: 2017/06/27 All goods and services in the class are subject to cancellation, namely: Dietary and nutritional supplements; dietary and nutritional supplements containing ketones; liquid protein supplements, namely, ketogenic protein supplement shakes and drinks; nutritional supplements energy bars; nutritional supplements in the form of energy gels, pastes and chews
Class 030. First Use: 2017/06/27 First Use In Commerce: 2017/06/27 All goods and services in the class are subject to cancellation, namely: Cereal based energy bars; candy
Class 032. First Use: 2017/06/27 First Use In Commerce: 2017/06/27 All goods and services in the class are subject to cancellation, namely: Sports performance drinks

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
--------------------------------------	---------------------------------------

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	5351133	Application Date	12/29/2015
Registration Date	12/05/2017	Foreign Priority Date	NONE
Word Mark	HUMANN		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2016/06/01 First Use In Commerce: 2016/06/01 Pharmaceuticals in the nature of healthand wellness products, namely, nut-raceuticals for use as dietary supplements, dietetic and functional foods, namely, bars, powders, tablets, gummies, chews, and capsules containing combinations of protein, fruits, vegetables, grains, aminoacids, minerals, nutrients and vitamins; beverages, namely, ready to drink and powdered drink mixes containing combinations of protein, fruits, vegetables, grains, amino acids, fortified with mineral, nutrients, and vitamins</p> <p>Class 029. First use: First Use: 2016/06/01 First Use In Commerce: 2016/11/09 Meats and Processed Foods in the natureof preserved, dried and cooked fruits and vegetable; jellies and jams</p> <p>Class 032. First use: First Use: 2016/06/01 First Use In Commerce: 2016/11/09 Light Beverages in the nature of instant flavored drinks, namely, fruit, grain, and vegetable juices and soft drinks; preparations in liquid or powder form formaking non-alcoholic fruit, vegetable, herbal, and cola beverages, namely, fruit, grain, and vegetable juices and combinations thereof</p>		

U.S. Registration No.	5355870	Application Date	05/04/2016
Registration Date	12/12/2017	Foreign Priority Date	NONE
Word Mark	HUMAN N		
Design Mark			
Description of Mark	The mark consists of the word "human" with an additional raised "n" at the end.		
Goods/Services	Class 005. First use: First Use: 2016/06/01 First Use In Commerce: 2016/06/25		

	<p>Pharmaceuticals, health and wellness products, namely, nutraceuticals for use as dietary supplements, dietetic and functional foods and beverages adapted for medical purposes; dietary and nutritional supplements; herbal supplements; vitamin and mineral supplements; dietary supplements for weight-loss or energy boosting in the nature of powders, tablets, capsules, lozenges, and nutritional supplement meal replacement bars for boosting energy, and immunity boosting nutritional supplements</p> <p>Class 029. First use: First Use: 2016/06/01 First Use In Commerce: 2016/06/25</p> <p>Processed meats and processed foods, namely, preserved, dried, and cooked fruits and vegetables; jellies and jams</p> <p>Class 032. First use: First Use: 2016/06/01 First Use In Commerce: 2016/06/01</p> <p>Fruit and vegetable beverages, instant fruit and vegetable flavored drinks, soft drinks, and other preparations in liquid or powder form for making nonalcoholic fruit, vegetable, herbal, and cola beverages</p>
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Attachments	<p>86860810#TMSN.png(bytes)</p> <p>87024417#TMSN.png(bytes)</p> <p>Petition to Cancel_HVMN.pdf(148296 bytes)</p>
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Signature	/Steven D. Smit/
Name	Steven D. Smit
Date	12/29/2017

**IN THE UNITED STATES PATENT AND TRADE REGISTERED TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of: Trademark Registration No. 5361363

For the mark: HVMN

Date registered: December 19, 2017

Human Power of N Company

Petitioner,

v.

HVMN, Inc.

Respondent.

§
§
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§
§
§
§
§
§

Cancellation No.

PETITION FOR CANCELLATION

Petitioner, Human Power of N Company a Texas Corporation with its business address at 1120 S. Capital of Texas Highway, Building 1, Suite 210, Austin, TEXAS 78746, believes that it is being damaged and will continue to be damaged by the above-identified registration, and hereby petitions to cancel this registration. As grounds for cancellation, Petitioner alleges as follows:

1. According to the records of the Patent and Trademark Office, the name and address of the current owner of the trademark registration at issue is HVMN, Inc., 505 Montgomery Street, Suite 1025, San Francisco, CALIFORNIA, 94111.

I. Standing of Petitioner

2. Petitioner and Respondent are competitors. Petitioner has two registered trademarks for the mark HUMANN; Registration No. 5,351,133 and HUMANN design logo; Registration No. 5,355,870. Petitioner has been using the trademark HUMANN in interstate commerce for the goods recited in its application since at least June 1, 2016.

By virtue of Petitioner's use in commerce of its trademark HUMANN in connection with its goods, such goods have become favorably known to the relevant trade and public under such trademark.

II. Ground for Cancellation – Likelihood of Confusion

3. Respondent originally filed an intent-to-use application for HVMN (pronounced "Human") on February 27, 2017. Respondent did not file a Statement of Use until October 11, 2017, citing first use of HVMN on June 27, 2017. As shown by the foregoing, Petitioner began using the HUMANN mark in interstate commerce over a year before Respondent's first use in interstate commerce.

4. Petitioner does not believe the Examiner understood that the mark HVMN is pronounced "Human," according to Respondent's Website and other marketing materials. If the Examiner had understood this fact, Petitioner believes the Examiner would have rejected the HVMN application based on a likelihood of confusion between Petitioner's registered mark HUMANN and Respondent's mark HVMN.

5. Petitioner's registered trademark HUMANN, and Respondent's registered trademark HVMN (pronounced Human) are similar in appearance, connotation and commercial appearance. Even more importantly, both marks have exactly the same pronunciation. Both marks are registered in Class 5 for dietary supplements, and class 32 for performance drinks. Upon information and belief, Petitioner's and Respondent's products under their respective marks are marketed and sold through the same or commercially similar channels of trade. Moreover, Petitioner is aware of actual confusion in the marketplace that is being caused by Respondent's marketing and sale of its products under the HVMN mark.

WHEREFORE, Petitioner respectfully requests that its petition to cancel the above-cited registration be sustained; that Respondent's registration for HVMN be cancelled; and that Petitioner be granted such other and further relief as to which it may be justly entitled.

Respectfully submitted,

GRAVES, DOUGHERTY, HEARON & MOODY
A Professional Corporation
401 Congress, Suite 2200
Austin, Texas 78701
(512) 480-5638 (telephone)
(512) 480-5838 (fax)

By: /s/ Steven D. Smit
Steven D. Smit
Texas State Bar No. 18527500

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on December 28, 2017, a true and correct copy of this Petition to Cancel was Sent by first class mail and a courtesy copy via email to the following:

Correspondent:

Zachary A. Aria
aria@blankrome.com
Blank Rome LLP
8th Floor
One Logan Square
Philadelphia, PA 19103

Owner:

Geoffrey Woo/CEO
HVMN, Inc.
505 Montgomery Street, Suite 1025
San Francisco, CA 94111

/Steven D. Smit/
Steven D. Smit

EXHIBIT F

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HUMAN POWER OF N COMPANY,)
 Petitioner,) Registration
) No.: 5,361,363
VS.)
) Cancellation
HVMN INC.,) No.: 92067643
 Registrant.)

ORAL DEPOSITION OF

BRIL FLINT

AUGUST 28, 2018

ORAL DEPOSITION OF BRIL FLINT, produced as a witness at the instance of the Registrant, and duly sworn, was taken in the above-styled and numbered cause on August 28, 2018, from 12:35 p.m. to 2:10 p.m., before Donna Wright, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of GRAVES DOUGHERTY HEARON & MOODY, 401 Congress Avenue, Suite 2200, Austin, Texas, pursuant to the provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE PETITIONER:

Mr. Steven D. Smit
GRAVES DOUGHERTY HEARON & MOODY
401 Congress Avenue
Suite 2200
Austin, Texas 78701
(512) 480-5600
ssmit@gdhm.com

FOR THE REGISTRANT:

Mr. Timothy D. Pescenye
BLANK ROME
130 North 18th Street
Philadelphia, Pennsylvania 19103
(215) 569-5347
pecsenye@blankrome.com

ALSO PRESENT:

Kelly Harrelson

1 to a video or an article that pronounced the word as
2 "Human."

3 Q. Right. So you watched the video, correct?

4 A. Uh-huh.

5 Q. That was yes?

6 A. Yes.

7 Q. And then what did you do?

8 A. In conjunction with the other avenues that
9 this concern had been raised through our company and
10 contacts -- I don't remember the exact date, but I got
11 in touch with our counsel about the potential confusion
12 of the marks.

13 Q. So you called your lawyer at some point --

14 A. Yes.

15 Q. -- after receiving this e-mail?

16 A. Uh-huh.

17 Q. Do you view, as the IP liaison for the
18 company, HVMN's use of that mark as trademark
19 infringement?

20 A. I do, yes.

21 Q. Is there a reason why you haven't sued HVMN?

22 A. That possibility remains open.

23 Q. If you would, could you turn to Exhibit 8?


24 A. Yes.

25 Q. Are you familiar with the document that's

EXHIBIT G

From: [Smit, Steve D.](#)
To: [Pecsenye, Timothy](#)
Cc: [Garcia, Velma](#); [Aria, Zachary](#); [Perea, Jennifer M.](#); [Aryani-Sabet, Samar](#)
Subject: RE: Human Power of N Company v. HVMN Inc.; - Response to Settlement Offer
Date: Wednesday, September 5, 2018 5:13:50 PM
Attachments: [image002.png](#)

Tim:

 It declines this offer and believes the only acceptable resolution of this matter is for HVMN to abandon its registration and change its name to a mark that is not confusingly similar to my client's trademarks for Humann.

Please let me know if you have any questions.

Regards, Steve

Steve Smit
480-5653 (tel)
480-5853 (fax)
ssmit@gdhm.com (email)



GRAVES DOUGHERTY HEARON & MOODY

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